

STATE OF INDIANA)
) SS.
COUNTY OF ST. JOSEPH)

IN THE ST. JOSEPH SUPERIOR COURT

SOUTH BEND, INDIANA

Cause No. 71D07-1209-MI-000159

SOUTH BEND COMMON COUNCIL,)
)
 Plaintiff)
)
 v.)
)
SOUTH BEND CITY ADMINISTRATION,)
)
 Defendant.)

**MEMORANDUM OF LAW
IN SUPPORT OF MOTION TO INTERVENE**

Pursuant to Ind. Trial Rule 24, applicant, Estate of ERIC JACK LOGAN, deceased (“Logan Estate,” the “Estate”), by counsel, submits the following memorandum of law in support of its motion to intervene filed contemporaneously herein:

BACKGROUND

This matter was originally filed more than seven years ago. It has been the subject to an extended stay and it has been assigned to a special judge. On November 13, 2019, the South Bend Common Council (the “Council”) filed a response to the City of South Bend’s (the “City Administration”) second summary judgment motion for declaratory relief. A hearing on the City Administration’s motion is set for January 22, 2020.

Logan Litigation

On June 16, 2019, Eric Logan was shot and killed by former South Bend Police Sergeant Ryan O’Neill. Logan’s estate filed a civil rights lawsuit against Sgt. O’Neill and the City of South Bend. Specifically, the Estate alleged that the City was liable for violation of Logan’s

civil rights because of its pattern and practice of racial discrimination in violation of 42 U.S.C. §1983. (Federal Lawsuit attached hereto as Exhibit A).

ARGUMENT

I. THE LOGAN ESTATE SHOULD BE PERMITTED TO INTERVENE AS A MATTER OF RIGHT

T.R. 24(A)(2) provides that

Upon timely motion anyone shall be permitted to intervene in an action...when the applicant claims an interest relating to a property...which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impeded his ability to protect his interest in the property...unless the applicant's interest is adequately represented by existing parties.

A. The Logan Estate's motion is timely.

The determination of the timeliness of a petition to intervene is largely left to the discretion of the trial court. *Moldex, Inc. v. Ogden Health Prods.*, 489 N.E.2d 130 (Ind. App. 1986). The *Logan* litigation is in the early stages. The preliminary pretrial conference was held just last month. Estate counsel only recently learned that a dispositive motion has been recently briefed in the instant case. The Logan Estate does not seek to raise any issues in this matter that have not already been raised.

B. The Logan Estate has an interest relating to a property in this case.

In its complaint, the Logan Estate alleged that Defendant, CITY OF SOUTH BEND committed a litany of *Monell* violations. Ex. A at 4-6.

The Boykins Tapes are more than reasonably calculated to lead to admissible evidence. Should these tapes be destroyed, the Logan Estate may be permanently precluded from presenting evidence of pattern and practice on behalf of the City of South Bend.

C. The existing parties cannot adequately protect the interests of the Logan

Estate.

To be allowed to intervene it is necessary that the potential intervenor show not that its interests will not be adequately protected but instead that the interests may not be adequately protected. The Logan Estate satisfies this requirement.

First, without being allowed to intervene, the Logan Estate has no means to ensure that the Boykins Tapes are preserved. If the tapes are destroyed, then the Estate may be forever precluded from discovering evidence to support Count III of its federal lawsuit.

Second, although the Council is seeking the same thing in the instant case. The Estate and Council's interests are adverse in the *Logan* Litigation in federal court.

II. THE LOGAN ESTATE SHOULD BE PERMITTED TO INTERVENE PERMISSIVELY

T.R. 24(B) provides, in pertinent part, that

Upon timely motion anyone *may* be permitted to intervene in an action...when an applicant's claim or defense and the main action have a question of law or fact in common.

(Emphasis added).

As demonstrated above, the Applicant's *Monell* claim (Ex. A, Count III) and the main action have a question of fact in common. Thus, the Logan Estate may and should be permitted to intervene.

CONCLUSION

For the foregoing reasons, the Logan Estate respectfully requests that this Honorable Court grant its motion to intervene.

Respectfully submitted,

Estate of ERIC JACK LOGAN, deceased

/s/ Trent A. McCain

One of Applicant's Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on **November 21, 2019**, a copy of the foregoing motion was filed electronically. Service of this filing will be made on all parties and/or counsel of record by operation of the Indiana E-Filing system.

/s/Trent A. McCain

One of Applicant's Attorneys